

# Calendar No. 972

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-970

## ESTATE OF PIERRE SAMUEL DU PONT DARDEN

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JUNE 25, 1970.—Ordered to be printed

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Mr. EASTLAND, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 3348]

The Committee on the Judiciary, to which was referred the bill (H.R. 3348) for the relief of the estate of Pierre Samuel du Pont Darden, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to permit the administrator of the estate of Pierre Samuel du Pont Darden to file a claim for credit or refund of overpayment of Mr. Darden's Federal income taxes for the taxable year 1959 at any time within 1 year after the bill's enactment, and would permit a credit or refund of any such overpayment notwithstanding any period of limitations or lapse of time.

#### STATEMENT

House Report 1692 of the 90th Congress of the House Judiciary Committee relates the facts of the case as follows:

The bill, H.R. 7502 was the subject of a subcommittee hearing on June 19, 1968. The testimony at that hearing indicated that a tax refund claim referred to in the bill is based on the fact that there was an actual overpayment of the estimated tax paid by Pierre Samuel du Pont Darden for the year 1959 in April of that year. In its report on the matter, the Treasury Department has indicated that it is opposed to legislative

relief in granting authority for the consideration of a refund claim on the ground that such relief would be discriminatory in that it would extend relief in an individual case where similarly situated taxpayers would not have the same relief. The committee has carefully considered this objection and feels that the circumstances of this particular case are sufficiently unique that it would not have the precedential effect ascribed to it by the Treasury Department.

First of all this case deals with an estimated taxpayment which was subsequently determined to have been greater than the amount which would have been due on the basis of a tax return filed by the executor of the taxpayer's estate after the taxpayer was held to have lost his life at sea. The circumstances of the death were the complicating factors which delayed the refund claim in this case. In substance, they were based on these facts:

In late November of 1959, Mr. Darden left his home in Norfolk, Va., stating that he and a friend were going to Florida by way of the inland waterway in a boat named *White Puss*. It later developed that he had advised an uncle that he was going to Bermuda but was not advising any member of his immediate family of the same. Since that time, Mr. Darden has not been heard from although the U.S. Coast Guard, Navy, Air Force, and merchant vessels made an extensive search in December of 1959.

The committee was advised that a Coast Guard report dated August 19, 1960, made several conclusions, conclusion 12 being "that on the basis of the evidence available in this case, no reasonable conclusion as to the whereabouts or status of the *White Puss* or its occupants can be reached at this time."

Mr. Colgate W. Darden, Jr., father of Pierre S. du Pont Darden, in 1961 or early 1962, discussed the legal problems involved with his lawyer and no conclusions were reached because of the law in Virginia that requires the passage of 7 years before presumption of death.

The father was contacted by phone at least twice by representatives of the Internal Revenue Service and on one occasion a representative of the IRS called at his home looking for Pierre S. du Pont Darden and was told the facts and appeared satisfied.

The testimony at the hearing indicated that from November 1959 until March 1965, when an administrator was appointed by court and date of death fixed, November 24, 1959, that no person was clearly charged with the care of the property of Pierre Darden.

The Treasury Department report indicated that prior to the actual court determination that Samuel du Pont Darden had lost his life at sea in November of 1959, there were some actions relating to the financial affairs of the decedent. At the hearing, considerable testimony was presented in explanation of these particular actions. It appears that these were routine matters that were consistent with a temporary absence and consisted primarily of a deposit of certain checks to Samuel

du Pont Darden's checking account. The transfer of fractional shares of stock indicated in the Treasury Department report to have been made by the father was stated at the hearing to have been accomplished by the company involved without any direction or authorization on the part of the father. In summary, it appears that the circumstances of the disappearance of the son plus the complex issues concerning the date of death or the presumption of death under applicable law served to complicate the filing of the refund claim which is the subject of this bill. Under these unusual circumstances, the committee feels that legislative relief is appropriate and accordingly, it is recommended that the bill be considered favorably.

The committee is in agreement with the conclusions reached by the House Judiciary Committee that this bill be favorably considered. Accordingly, the committee recommends favorable consideration of H.R. 3348 without amendment.

Attached hereto and made a part hereof is the report submitted by the Treasury Department to the chairman of the House Judiciary Committee, and a statement submitted by Joshua Pretlow, administrator of the estate of Pierre Samuel duPont Darden to the House Judiciary Committee.

TREASURY DEPARTMENT,  
*Washington, D.C., March 12, 1968.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of March 30, 1967, for the views of the Treasury Department on H.R. 7502 (90th Cong., first session), entitled "A bill for the relief of the estate of Pierre Samuel du Pont Darden."

H.R. 7502 would permit the administrator of the estate of Pierre Samuel du Pont Darden to file a claim for credit or refund of overpayment of Mr. Darden's Federal income taxes for the taxable year 1959 at any time within 1 year after the bill's enactment, and would permit a credit or refund of any such overpayment, notwithstanding any period of limitations or lapse of time.

The Treasury Department is opposed to enactment of H.R. 7502. Our information indicates that Mr. Darden disappeared at sea in November 1959, and that no conservator or administrator was appointed to handle his estate prior to March 2, 1965, at which time a Virginia court entered an order holding that Mr. Darden died on or about November 24, 1959. An administrator of Mr. Darden's estate was thereafter qualified. It appears that no action was taken with respect to Mr. Darden's Federal income tax matters until a 1959 Federal income tax return was filed on or about June 1, 1966, with the Internal Revenue Service by the administrator of Mr. Darden's estate. This return reflected an overpayment of Federal income taxes for the year 1959 in the amount of \$17,267.93. The overpayment shown on the return resulted from payments of estimated tax for 1959 which were properly made by Mr. Darden prior to his disappearance. This overpayment of estimated tax could not be refunded to Mr. Darden's es-

tate because approval of such a refund was barred by the statute of limitations.

In general, the statute of limitations contained in section 6511(a) of the Internal Revenue Code of 1954 provides that a claim for refund of an overpayment of tax must be filed by the taxpayer within 3 years from the time the original return was filed or within 2 years from the time the tax was paid, whichever is later. However, section 6511(b) limits the refund payable within 3 years after the date of filing a return to the portion of tax paid within the period, immediately preceding the filing of a refund claim, equal to 3 years plus the period of any extension of time for filing the return.

As indicated earlier, Pierre Samuel du Pont Darden's 1959 income tax return was filed on or before June 1, 1966. No extension of time for filing this return was ever requested by those acting on behalf of Mr. Darden. Accordingly, section 6511(b) of the Internal Revenue Code limits the amount of any refund payable to Mr. Darden's estate to the amount of tax paid within 3 years prior to June 1, 1966. No taxes with respect to the year 1959 were paid by or on behalf of Mr. Darden during this 3-year period. Accordingly, the statute of limitations set forth in section 6511(b) of the code bars any refund of 1959 taxes to Mr. Darden's estate.

The fact that Mr. Darden was missing during the period when his 1959 income tax return and refund claim should have been filed does not constitute a sufficient reason for granting special relief in this case. Under the provisions of section 6012(b) of the Internal Revenue Code of 1954, relating to persons required to make returns of income, a return should be made by the fiduciary or other person responsible for a missing person's property in instances in which a person is not heard from for a period of time. There does not appear to be any reason why such a return could not have been filed in Mr. Darden's case. In particular, it appears that Mr. Darden's estate could have petitioned for the appointment of a conservator under Virginia law, who would have been entitled to file a tax return under section 6012(b) of the Internal Revenue Code.

In addition, knowledge of the disappearance of Mr. Darden imposed a duty under section 6012(b) of the Internal Revenue Code on the next responsible person to see that Mr. Darden's Federal tax returns were filed where and when appropriate. The reasonableness of this requirement is indicated by the fact that, from the time of Mr. Darden's disappearance until an administrator was appointed, Mr. Darden's affairs were handled, to a significant extent, by his father. For example, during the period of Mr. Darden's disappearance and prior to the appointment of an administrator, dividends in an amount in excess of \$100,000 were paid on stock owned by Mr. Darden at the time of his disappearance. This large amount of income received over a 5-year period was apparently handled by Mr. Darden's father who received it and deposited in a bank account to the credit of his son. In addition, fractional shares of stock, issued in Mr. Darden's name, seem to have been sold on his behalf, presumably by his father, during this period. Further, all of Mr. Darden's personal belongings were managed by Mr. Darden's father after Mr. Darden disappeared. It therefore appears that there were persons acting on behalf of Mr. Darden who could have filed his tax return and claim for refund, just as they handled



his other business and personal affairs. It does not appear that the failure of these persons to take the necessary action to insure compliance with the revenue laws constitutes an appropriate basis for granting special relief from the statutes of limitation.

Although the operation of the statute of limitations may appear harsh in particular cases, it is important to remember that the statute of limitations is a necessary element in the equitable administration of any tax system. For example, not only does the statute of limitations bar taxpayers from obtaining refunds of tax overpayments after a period of time, but it also bars the Government from assessing additional tax after similar periods of time. Such a requirement is essential in order to achieve finality in tax administration by setting at rest issues that become difficult to prove as a result of the passage of time. A basic reason for the statute of limitations is that, after the expiration of a reasonable period of time, witnesses may be unavailable, records may be destroyed or lost, and the problems of proof and of administration of tax claims become too burdensome for both taxpayers and the Government. The Darden case itself illustrates the need for a statute of limitations. Unless the next responsible persons in missing person cases are required to file the appropriate Federal tax returns, the taxable years of missing taxpayers would often have to be examined many years after their disappearance in order to establish the amount of refund, if any. This activity, occurring long after the tax years in issue and after relevant records may have been destroyed or lost, would hardly be conducive to achieving the finality in the administration of the tax laws which is the objective of the statutory provisions imposing a period of limitations. In addition, granting special relief in this case would constitute a discrimination against other estates which are prevented from obtaining relief by the operation of the statute of limitations, and would create an undesirable precedent.

In summary, it appears that the failure of those acting on behalf of Mr. Darden to comply with the requirements of the Internal Revenue Code regarding the filing of tax returns for missing taxpayers does not constitute a sound basis for granting special relief from the statute of limitations to Mr. Darden's estate.

The Bureau of the Budget has advised the Treasury Department that there is no objection from the standpoint of the administration's program to the presentation of this report.

Sincerely yours,

STANLEY S. SURREY,  
*Assistant Secretary.*

#### MEMORANDUM

To: The subcommittee of the Committee on the Judiciary of the House of Representatives of the United States

From: Joshua Pretlow, administrator of estate of Pierre Samuel du Pont Darden

GENTLEMEN: I am appearing as administrator of Pierre Samuel du Pont Darden on behalf of H.R. 7502, the purpose of which is to waive the limitations of time for claim for refund of taxes paid by Pierre Samuel du Pont Darden for the year 1959.

Briefly, the facts are these:

Mr. Darden filed his estimated return on form No. 1040 ES for the year 1959 in April of that year and paid taxes at that time in the amount of \$39,655, which proved to be \$17,267.93 in excess of the actual tax due for 1959. In late November of 1959, Mr. Darden left his home in Norfolk, Va., stating that he and a friend were going to Florida by way of the Inland Waterway in a boat named *White Puss*. It later developed that he had advised an uncle that he was going to Bermuda but was not advising any member of his immediate family of the same. Since that time, Mr. Darden has not been heard from although the U.S. Coast Guard, Navy, Marines, Air Force, and merchant vessels made an extensive search in December of 1959. It is significant that the Coast Guard report, a photocopy of which is attached hereto, dated August 19, 1960, made several conclusions, conclusion "12" being "that on the basis of the evidence available in this case, no reasonable conclusion as to the whereabouts or status of the *White Puss*, or its occupants, can be reached at this time." Mr. Colgate W. Darden, Jr., father of Pierre S. du Pont Darden, in 1961 or early 1962, discussed with the writer the legal problems involved and frankly no conclusions were reached because of the law in Virginia that requires the passage of 7 years before presumption of death.

Colgate W. Darden, Jr., father of Pierre S. du Pont Darden, was contacted by phone at least twice by representatives of the Internal Revenue Service and on one occasion a representative of the IRS called at his home looking for Pierre S. du Pont Darden and was told the facts and appeared satisfied.

The Treasury Department report to your committee devotes a large part citing the pertinent sections of the Internal Revenue Code dealing with the statute of limitations and the reasons therefore. It is readily conceded that without a special bill no refund or credit could be given; however, it is respectfully suggested that due to the unusual circumstances that it would be proper for the Congress to pass H.R. 7502.

Section 6012(b)(2) requires those individuals who are unable to make a return to be made by "a duly authorized agent, his committee, guardian, fiduciary, or other person charged with the care of the person or property of such individual." It is respectfully submitted that from November 1959, until March 1965, when an administrator was appointed by court and date of death fixed, November 24, 1959, that no person was "charged" with the care of the property of Pierre Darden. The Treasury report talks of the duty of Pierre Darden's father as the "next responsible person to see that Mr. Darden's Federal tax returns were filed where and when appropriate" when, in fact, the Internal Revenue Code does not mention "the next responsible person." It is true that the taxpayer's father took some action concerning some tangible personal property which was necessary but it should be pointed out that he took no action that could not be reversed and the property put in its status quo. Dividends in cash and in stock were received and the checks deposited to the account of taxpayer and on two occasions fractional shares were sold by the corporations without any action on the part of the taxpayer's father. Only in one instance was any money used belonging to the taxpayer and this when valuable rights would have been lost for the taxpayer if his mother had not taken such action.

The most significant and favorable evidence for the taxpayer is a letter from Mr. Darden, dated December 12, 1962, to the District Director, Internal Revenue Service, Richmond, Va., as follows:

"DISTRICT DIRECTOR OF INTERNAL REVENUE,  
*"Richmond, Va.*

"DEAR SIR: I have received a communication addressed to Pierre DuPont Darden, sent in care of me. My son disappeared at sea in the closing days of 1959. I assume that he was lost, and it is my understanding that the settlement of his tax liability must await the determination of the court and the settlement of his estate. Under the Virginia law 7 years must elapse before the court can make a determination of the date of his assumed death.

"If this is not in accord with the wishes of the Internal Revenue Department I shall be glad to go over the matter with you at your convenience and do whatever is necessary to keep his affairs in proper order.

"Sincerely,

"COLGATE W. DARDEN, Jr."

It should be pointed out that the Treasury Department probably did not have this letter before them when it made its report.

It should also be pointed out that accurate tax returns could not have possibly been made until after March 2, 1965, when the court made its judicial determination that Pierre S. duPont Darden "died on or about November 24, 1959." Had the court determined that he died at some later date after 1959, the tax paid would have probably been very close to being the correct amount of tax for 1959 because of the additional income that Mr. Darden would have received for the last quarter of 1959.

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